

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 5, 2001 at 3 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Eve Franklin (D)
Sen. Dan Harrington (D)
Sen. Royal Johnson (R)
Sen. Jerry O'Neil (R)
Sen. Emily Stonington (D)

Members Excused: Sen. Don Hargrove (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Susan Fox, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 221, 1/23/2001; SB 178,
1/23/2001
Executive Action:

HEARING ON SB 221 AND SB 178

Sponsors: SEN. ROYAL JOHNSON, SD 5, Billings
SEN. BILL TASH, SD 17, Dillon

Proponents: Bob Olsen, Montana Hospital Association
Kent Burgess, St. John's Lutheran Ministries

Walin Melcher, Disabilities Coalition
Pat Hermanson, St. Vincent's Healthcare
Jani McCall, Deaconess Billings Clinic
Donald Harr, Montana Psychiatric Association
Beda Lovitt, Montana Medical Association

Opponents: **Rose Hughes, Montana Health Care Association**
Dr. Melvin Pitts, Great Falls Clinic
Mona Jamison, Great Falls Clinic
Ray Hoffmann, Peak Medical
Bill McClain, Mac Associates
Kristi Blazer, Rimrock Foundation, MASP
Greg Hagfas, Great Falls Clinic
Connie Surdeberg, Cedarwood Villa, Red Lodge
Vernon Bertelsen, Montana Senior Citizen Association
Melody Hurst, Parkview Care Center, Billings

Opening Statement by Sponsor:

SEN. ROYAL JOHNSON, SD 5, Billings, introduced SB 221. He said this is a cleanup bill for the certificate of need (CON). It will repeal the statutes requiring a CON for certain health care facilities. The certificate of need came into effect about 20 years ago. Presently, anyone who wants to build an additional medical facility has to file a CON. This is a very complicated and lengthy procedure. The CON protects the businesses that may be fairly marginal and should not be in business. He passed out the amendments **EXHIBIT (phs29a01)** and explained them.

SEN. BILL TASH, SD 17, Dillon, introduced SB 178. This was requested by the Department of Public Health and Human Services. This bill is an act repealing the statutes requiring a certificate of need for certain health care facilities, voiding the repeal if sufficient funding for the certificate of need program is provided in HB 2.

Proponents' Testimony:

Bob Olsen, Montana Hospital Association, presented a copy of his testimony **EXHIBIT (phs29a02)**. He urged the committee to support this bill to repeal the certificate of need.

Kent Burgess, CEO St. John's Lutheran Ministries, provided a copy of his testimony **EXHIBIT (phs29a03)**. He said the CON ignores quality and the elimination of CON is a good place to start. He stated that the theory "build it and they will come" is a myth.

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Walin Melcher, represented a coalition of people with disabilities. He said his coalition supports the moratorium on the intermediate care facilities, which serves those with mental retardation.

Pat Hermanson, President St. Vincent's Healthcare submitted a copy of his testimony **EXHIBIT (phs29a04)**. He said the CON law was appropriate in 1970, but is not today. It is archaic and needs to be repealed.

Jani McCall, Deaconess Billings Clinic, thanked **SEN. JOHNSON AND SEN. TASH** for bringing forth these bills. She said they are in absolute support of the bills and the repeal of the CON. She urged the committee to support the passage of at least one of these bills.

Donald Harr, Montana Psychiatric Association, asked the committee to consider **SEN. JOHNSON'S** bill.

Beda Lovitt, Montana Medical Association, said the committee certainly has heard adequate reasons why her association stands in support of **SEN. JOHNSON'S** bill.

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Opponents' Testimony:

Rose Hughes, Montana Health Care Association, presented a copy of her written testimony **EXHIBIT (phs29a05)**. She said the current law allowed for planned growth of the health care services and urged the committee to vote no on SB 221.

Ms. Hughes, passed out a copy of testimony from **Montana Association Home Health Agencies EXHIBIT (phs29a06)** and said they are opposed to these bills.

Dr. Melvin Pitts, Great Falls Clinic, said he was here to speak in opposition of SB 221. His reasons for opposing this bill, are without the CON, the joint venture between the Great Falls Clinic and the local hospital would not have occurred. They have been in business for two years and have provided care for 5900 patients.

Mona Jamison, Great Falls Clinic, stated that hospitals are exempt from the CON, why then are the hospitals here to oppose the CON. If you get rid of the CON, there will be communities

that will be served by one health care facility, which will be providing the gambit of health care services. **Ms. Jamison** said the CON looks at need, looks at alternative services, looks at cheaper services, demands joint planning and prevents duplication of services. If you repeal the statute of CON, you will be no closer to a free market. Everything about medical care is regulated, starting at the federal level. If you eliminate the CON, she predicted in ten years, you will have cut competition, and you will have five, six or seven major players in this state.

Ray Hoffmann, Peak Medical, said that a year ago the Governor's Council on Aging said the fastest growing population will those who are 65 and above. If you take away the CON, you will lose the ability to plan and determine the needed and vital services for that group of people.

Bill McClain, Mac Associates, said the CON is a cumbersome process. Without the process, they would not have done such a thorough review of the communities where he built nursing homes. They didn't just go into those communities, they looked at the CON. He said with the repeal of CON, we are adding fuel to the fire and we are in a forest fire right now.

Kristi Blazer, Rimrock Foundation, MASP, said they are opposed to the repeal of the CON. She said for 10 years the two hospitals in Billings have been without the CON process. As a result, the two hospitals stopped sharing obstetrical services and started competing and the cost of having a baby has gone up \$1500. She stated the repeal of the CON process would also hurt consumers of addiction treatment, in turn that will increase the cost of law enforcement and other public services. For those reasons, they joined with the others and opposed SB 221.

Greg Hagfas, Great Falls Clinic, said he was here to oppose SB 178 and SB 221. He has gone through the CON process and felt it had done a number of things for the community of Great Falls. The clinic was built as a result of the process. He said he was opposed to SB 178 and SB 221.

Connie Surdeberg, Cedarwood Villa, Red Lodge, said if the CON is repealed, it will have a devastating effect on her nursing homes as well as her community. Her nursing home in the second largest employer in the community.

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Vernon Bertelsen, Montana Senior Citizen Association, said they feel this is a threat to the nursing homes they now have. They

are afraid this will increase the cost of operating nursing homes and he urged the committee not to support these bills.

Melody Hurst, Parkview Care Center, Billings, said she is a large employer on the south side of Billings, employing 85 people. They provide quality service and 80% of her patients are paid for by Medicaid. If you have five percent of your beds open, you don't need any more.

Nancy Driver, Rocky Mountain Care Center, Helena, said their buildings are over 10 years old, but that does not mean they do not give quality care. She opposes the elimination of CON.

Informational Testimony: Mike Hanshew, Department Health and Human Services. He said they spend about \$160 million a year on long term care services for senior citizens and people with disabilities. This is the kind of policy debate that is part of the parcel of managing these programs. Rather than having the mentality of "built it and they will come" we should have "if they come, we must pay". The demand for community services outside of nursing homes; such as home health care are the fastest growing part of this industry and they all compete for money. So the decisions you make, regarding increased utilization, will have an impact on your ability to spend money on other issues. This is one of the dilemmas you have, when Medicaid has to pay more, it will cost you money and diminish your resources to address other issues. That is why his department is opposed to the repeal of CON.

Questions from Committee Members and Responses:

SEN. CHRISTIAENS asked if **Mr. Hanshew** had seen the amendments. **Mr. Hanshew** said he had and the amendments would address the issue of the ICFMR portion of the fiscal note.

SEN. CHRISTIAENS asked if the CON is repealed, what effect will it have on the Omstead decision. **Mr. Hanshew** said the Omstead decision seems to be changing the landscape in long term care and putting great pressure on states to reallocate resources away from institutional settings. He felt you will have fewer beds and sicker older people and continued pressure to meet all their needs. Right now the Medicaid does not say these communities services are an entitlement, but the Amstead decision seems to imply they are.

SEN. STONINGTON said she is trying to understand this competitive marketplace, and her understanding is that the health care field is not an open marketplace. If you get rid of CON, would you advantage hospitals, because they can cross-utilize their beds.

So by looking at the public environment and small communities, her perception is that nursing homes will be at risk. **Mr. Olsen** said he put the question straight to the hospital in Lewistown - if they did not have CON would they add beds, and they said they would, because they are trying to expand their business. He said he asked the same question to the hospital in Red Lodge and they said would not expand, because they do not have the kind of capital that is needed. The small towns have found out that CON does not protect them. CON does not restrict the number of home health agencies or personal care homes, it was only when Medicare changed their reimbursement policies that things closed up.

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SEN. STONINGTON asked what is personal care. **Mr. Olsen** said a personal care home is a group living arrangement for seniors.

SEN. FRANKLIN asked if he was opposed to SB 178. **Mr. Hanshew** said the way that bill evolved was the department needed more money. He said they were not opposed to CON if they had the money.

SEN. GRIMES asked about the concept of state health planning. **Drew Dawson, DPHHS**, said the issue of comprehensive state planning wasn't part of the recommendations of the consultant. Currently, what they do is take care of the state health care facility's plan. **SEN. GRIMES** asked if he could explain what the comprehensive state plan is. **Mr. Dawson** said that comprehensive health planning is looking at the broader picture of where resources are, where resources aren't, how to use CON as a policy tool.

SEN. CHRISTIAENS said we have statutes that mandate comprehensive health planning, but we have not funded you adequately. **Mr. Dawson** we have statutes that are relative to CON and the state health care facilities plan. In the 70's we had federal resources devoted to comprehensive state health planning, but those resources are no longer in existence.

Closing by Sponsor:

SEN. TASH thanked the committee for a good hearing. This is a complex issue and asked the committee to consider SB 178.

SEN. JOHNSON thanked all the people who testified on this bill. We ought to look closely at this situation and he hoped the committee would adopt the bill with the amendment.

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ADJOURNMENT

Adjournment: 5:35 P.M.

SEN. AL BISHOP, Chairman

JEANNE FORRESTER, Secretary

AB/JF

EXHIBIT (phs29aad)